

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD ANTHONY THURMOND,

Defendant-Appellant.

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UNPUBLISHED

August 5, 2003

No. 238516

St Joseph Circuit Court

LC No. 99-009938-FC

Before: Smolenski, P.J., and Cooper and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of first-degree criminal sexual conduct (CSC), MCL 750.520b(1), assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to forty-five years to life imprisonment for the CSC conviction, eighty months to ten years' imprisonment for the assault conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm defendant's convictions and sentences, but remand for the correction of a clerical error in the judgment of sentence.

Defendant, in an apparent jealous rage, assaulted and tortured the victim, his live-in girlfriend, who was eight months pregnant with twins. After retrieving the victim and the couple's one-year-old daughter from a relative's residence, defendant first threatened to kill the victim as they drove home in his truck. Defendant reached for a crow bar and held it in a manner that indicated he was about to strike the victim. The victim fled from the vehicle and dove into an icy cold river to escape him. Defendant initially threatened the victim, then promised that he would not harm her if she returned to the truck. The victim complied. However, upon arriving at their trailer, defendant forced the victim to take off her clothes and put her hands behind her back as he repeatedly struck her in the chest and face with his hands. Defendant put a loaded rifle to the victim's temple and burned her body severely and repeatedly using cigarettes and a stove grate. Defendant also sexually assaulted the victim while the barrel of the rifle lay next to her head. After the sexual assault, defendant forced the victim to go outside and relieve herself in the dirt. Defendant would not allow the victim to return to the camper. Instead, he forced her to sit naked on top of his vehicle in the freezing rain, threatening to shoot her if she moved. Defendant eventually allowed the victim to return to the trailer, and he went to sleep.

The next day, defendant left the home, and the victim's sister came to the trailer. Upon observing the victim's injuries, she persuaded the victim to go to police. On the way to the

police station, the victim was upset when she saw defendant pursuing them. When they were close to the police station, defendant quit the chase. A female officer who photographed the victim's injuries advised the investigating officer that hospitalization was necessary for the extensive burns on the victim's body. The victim refused to seek medical treatment, fearing that she would encounter defendant at the hospital. She agreed to seek medical treatment when police promised to accompany her to the hospital. At the hospital, it was learned that the victim had suffered "full thickness burns," burns that extended below the surface into the underlying fat layer. The numerous burns ranged in degree of severity, and the majority of the burns were to the victim's buttocks and thigh. The burns likely occurred within twenty-four hours of the victim's presentation at the hospital. Police escorted the victim to her sister's residence when defendant was seen in the area. Police left the victim to pursue and arrest defendant.

Defendant denied any assault or torture of the victim. He testified that he would not have harmed the victim because of her pregnancy, despite the fact that he did not know if she was carrying his child. Defendant's relatives and friends testified that they saw defendant and the victim the night before his arrest when they were drinking together. However, they could not provide an alibi for the entire evening. The trial court convicted defendant as charged and found substantial and compelling reasons to exceed the legislative sentencing guidelines, citing to the extreme brutality of the crime, the need to protect society, and defendant's age.

Defendant first contends that the trial court erred in finding that a sexual assault occurred because there was no physical evidence of the sexual assault, and the victim failed to report the sexual assault to the emergency room physician. We disagree. This Court reviews findings of fact by a judge in a criminal bench trial for clear error. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). A factual finding is clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that an error occurred. *Id.* When reviewing the trial court's factual findings, regard is given to the special opportunity of the trial court to assess the credibility of the witnesses who appear before it. *People v Thenghkam*, 240 Mich App 29, 44; 610 NW2d 571 (2000). Trial court credibility assessments are not reviewed anew on appeal unless the testimony is patently incredible, defies physical realities, is seriously impeached, or could not be believed by any reasonable juror. *People v Lemmon*, 456 Mich 625, 643-644; 576 NW2d 129 (1998). Here, we cannot conclude that the trial court's determination regarding the credibility of the sexual assault testimony was clearly erroneous. The extensive burns inflicted all over her body evidenced the torture and brutality experienced by the victim. The trial court concluded that the pain suffered as a result of the burns paled in comparison to the sexual assault, thereby accounting for the failure to report the assault to the emergency room physician. Contrary to defendant's assertion, the trial court's sexual assault finding is not illogical or clearly erroneous. *Gistover, supra*.<sup>1</sup>

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<sup>1</sup> Defendant's challenge to the failure to locate skin on the grate used to burn the victim is also without merit. The forensic scientist testified that skin would not necessarily adhere to the grate. Furthermore, the scientist testified that the burn patterns were consistent with application of the grate to the skin.

Defendant next alleges that the trial court relied on subjective and invalid reasons when sentencing him to a term in excess of the legislative guidelines. We disagree. The trial court's determination that substantial and compelling reasons exist to depart from the recommended minimum sentence is reviewed for an abuse of discretion. *People v Armstrong*, 247 Mich App 423, 424; 636 NW2d 785 (2001). The trial court may depart from the guidelines where legitimate factors have not been considered by the guidelines or where factors considered by the guidelines have been given inadequate or disproportionate weight. *Id.* In this case, the trial court concluded that the guidelines did not contemplate the circumstances and brutality of the crimes. Under the circumstances of this case, we cannot conclude that the trial court abused its discretion.

The parties agree that an error in the judgment of sentence requires correction. Although the trial court stated at sentencing that defendant was entitled to credit for time served to be applied to the felony-firearm conviction, the judgment of sentence does not reflect the trial court's oral ruling. Therefore, we remand for the procedural correction of the judgment of sentence.

Affirmed, but remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Michael R. Smolenski  
/s/ Jessica R. Cooper  
/s/ Karen M. Fort Hood